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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/803,132	03/09/2001	Georges Driesen	B-06304	8952
7590	03/11/2004		EXAMINER	
Edward S. Podszus The Gillette Company Prudential Tower Building Boston, MA 02199			GRAHAM, GARY K	
			ART UNIT	PAPER NUMBER
			1744	

DATE MAILED: 03/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/803,132	Applicant(s) DRIESEN ET AL.	
	Examiner Gary K Graham	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 24-62 is/are pending in the application.
- 4a) Of the above claim(s) 25, 27, 42, 45-48 and 50-62 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 38 is/are allowed.
- 6) ☒ Claim(s) 24, 26, 28-37, 39-41, 43, 44 and 49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12-05-03</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

Applicant's statement that "...after allowance of claims reading on the species, then in accordance with the MPEP the next species is to be taken up for examination. It is believed that when the other species are examined, it would be appropriate to add an additional independent apparatus claim." is noted but not understood. When generic claims are allowed, claims directed to non-elected species, which properly depend from such allowed generic claims, can be rejoined. It is not clear if this is what applicant is referencing. Non-elected species claims that do not depend from an allowed generic claim will not be rejoined. Further, it is unclear what additional apparatus claims applicant feels he would be entitled to introduce. The new independent claims would have to read on the elected invention/embodiment. Clarification is requested.

Applicant's desired to rejoin claims 26 and 42 is noted. Applicant states that these claims relate to the figure 2 embodiment. Applicant further states that the Examiner may have confused claim 26 with claim 25. However, it is applicant who listed the claims deemed to read on the elected species (19 March 2003 election). Applicant did not list claim 26 as being elected. As such, it is unclear what the Examiner has to do with applicant's not listing claim 26 as being elected. Clarification is requested. However, claim 26 does indeed appear to read on the elected figure 2b embodiment, and will be rejoined per applicant's request. With respect to claim 42, it is noted that applicant did not list such as reading on the elected embodiment of figure 2b.

Art Unit: 1744

Further, claim 42 sets forth that the lateral dimension is a diameter. As can be seen in figure 2b, the filament have the first and second zones does not appear as circular and therefore does not appear to have a diameter. There also does not appear to be disclosure of the figure 2b embodiment as being in circular form. Clarification is requested. Claim 42 will not be rejoined at this time.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 24, 26, 30, 32-35 and 39-41 rejected under 35 U.S.C. 102(b) as being anticipated by Bond et al '208.

The patent to Bond discloses the invention as is claimed. While Bond discloses his device as a paintbrush, such could be used for any purpose so desired, including tooth brushing. Setting forth the device as a "toothbrush" relates to the intended use of the device and does not impart structure to the brush. Bond sets forth a polyamide monofilament bristle (1, fig.1), having

Art Unit: 1744

multiple adjoined zones which are separated by fusion lines (2). While the fusion lines also have voids (3) therein, such are sufficiently small that the fusion line is considered “substantially” free of voids. Note that use of “substantially” does allow for some voids. Such fusion lines are considered to be regions of preferred breaking between the zones which would act to weaken the fusion line with respect to the zones.

With respect to claim 30, the zone will have at least one colorant.

Claims 24, 26, 28, 30, 34-36, 39-41, 43, 44 and 49 are rejected under 35

U.S.C. 102(b) as being anticipated by Hans et al '853.

The patent to Hans discloses the invention as is claimed. Hans sets forth a polyamide bristle (12, fig.3A), having multiple adjoined zones (13,14,15) which are separated by fusion lines. Such fusion lines are considered to be regions of preferred breaking between the zones as is set forth by Hans. Mechanical manipulation can be employed to separate the zones (fig.4).

While claim 1 sets forth that the zones are defined from a divided mass flow such does not define over Hans. Such at most relates to the method of manufacture which is not of significance in the product claim. Further, the components (13,14,15) are divided before being joined at the interface.

Art Unit: 1744

Note that while Hans takes strands (13-15) and solvent welds or fuses them, such is considered to form a single bristle or "monofilament". This appears consistent with applicant taking multiple filaments (14, figure 2b) and refusing them to form a monofilament. Applicant has taken multiple filaments and fused them to define a monofilament. Hans has done the same thing.

With respect to claim 30, the zone will have at least one colorant.

Claims 24, 28-34, 36 and 39 are rejected under 35 U.S.C. 102(e) as being anticipated by Weihrauch (U.S patent 6,506,327).

The patent to Weihrauch discloses the invention as is claimed. Weihrauch discloses a monofilament that is produced by co-extrusion to form zones (2,3) that are divided by regions of preferred breakage (figs.1,2). Said regions are free of voids. Said zones are made with different polymers. The monofilaments are mechanically manipulated to split the ends along the regions.

With respect to claims 29 and 31, since Weihrauch discloses that the various parts 2 can have different colors or dyes than the thin layers, and thus different fillers, and the parts 2 are made of different materials than the thin layers, the claims are deemed to be met.

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bond et al (U.S. patent 5,128,208).

The patent to Bond discloses all of the above recited subject matter with the exception of the split region extending 10-25% of the length of the bristle.

Art Unit: 1744

While Bond does not discuss the specific length of the split region he clearly discusses a split region at the end of the monofilament. To select a particular length of the split region, including as claimed, does not appear inventive but merely that which one of skill in the art would find obvious by routine experimentation of the length of the split region. Where the general conditions of the claim are disclosed in the prior art, it is not inventive to discover the optimal ranges by routine experimentation. Applicant's selection of a particular length of split zone does not appear to produce any new and unexpected results which are different in kind and not merely degree from Bond.

### *Response to Arguments*

Applicant's arguments filed 05 December 2003 have been fully considered but they are not persuasive.

Applicant's arguments with respect to Hans is noted but not persuasive. While applicant argues that the rejection under 102(b) by Hans '853 is improper and should be at most a 102(a), such is not persuasive. Note that in determining whether to apply 102 (a),(b) or (e) one must look to the *effective* filing date of the application. In this case, applicant's effective filing date is 02 July 1999 and not the foreign priority date of 14 September 1998. Although the filing date of the foreign priority document may be used to overcome certain references, it is not the effective filing date. Applicant's attention is directed to MPEP 706.02 and 706.02(a). Applicant's discussion of the method of manufacture of the filament is noted but does not define

Art Unit: 1744

over Hans. The claim now calls for a divided mass flow that is rejoined. Such relates to the method of manufacture. Further, the components of Hans (13,14,15) are clearly mass flows that are rejoined along an interface. Whether or not they are divided from an initially common flow does not appear to affect the final product. The chemical welding of the plural components seems to satisfy the requirement that the zones are rejoined along an interface as claimed.

Applicant's argument with respect to Bond are noted but not persuasive. As stated above, while Bond does include some small voids along the interface he prefers that such are less than 1% of the area. Such appears to meet applicant's limitation of the interface being "substantially" free of voids.

*Allowable Subject Matter*

In view of the above rejections by the newly cited art, the indicated allowability of claims 29 and 31 is hereby withdrawn.

Claim 38 is allowed.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (6:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Warden can be reached on 571-272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary K Graham  
Primary Examiner  
Art Unit 1744